Supreme Court, U.S.
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No. 00-7

In the

Supreme Court of the United States

GEORGEEN STEVENS,

Petitioner,

v.

ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MEMORANDUM OF RESPONDENT

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois
Counsel of Record

A. BENJAMIN GOLDGAR
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3698

Counsel for Respondent

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REASONS FOR GRANTING THE WRIT

THE COURT SHOULD HOLD THIS CASE PENDING A DECISION IN *GARRETT* AND SHOULD DECIDE THIS CASE IN ACCORDANCE WITH *GARRETT*.

Respondent Illinois Department of Transportation does not oppose the petition for writ of certiorari. The Respondent agrees with Petitioner Georgeen Stevens that the petition should be held pending a decision in *University of Alabama at Birmingham Bd. of Trustees v. Garrett,* No. 99-1240, and that this case should be disposed of in accordance with the decision in *Garrett*.

Like *Garrett*, this case raises the question of whether Congress had the power under section 5 of the Fourteenth Amendment to abrogate the states' Eleventh Amendment immunity when it enacted the Americans with Disabilities Act. The Court of Appeals for the Seventh Circuit held that Congress had no such power and, as the Petitioner notes (Cert. Pet. at 4), dismissed her claim for lack of jurisdiction. *Stevens v. Illinois Dep't of Transp.,* 210 F.3d 732 (7th Cir. 2000).

The Seventh Circuit had earlier reached the same conclusion in *Erickson v. Northeastern Illinois Univ.,* 207 F.3d 945 (7th Cir. 2000). As the Petitioner also notes (Cert. Pet. at 4-5), the courts of appeals are split on this question. *Compare, e.g., Martin v. Kansas,* 190 F.3d 1120 (10th Cir. 1999), *with Brown v. North Carolina Div. of Motor Vehicles,* 166 F.3d 698 (4th Cir. 1999).

Since this Court agreed to decide the question and granted certiorari in *Garrett*, the policy of the Illinois Attorney General's Office in cases before the Seventh

Circuit raising this question has in fact been to request that the Court of Appeals hold the cases in abeyance pending a decision in *Garrett*. The Court of Appeals has granted those requests. *See, e.g., Ledvina v. Northeastern Illinois Univ.*, No. 00-2206 (7th Cir. Aug. 9, 2000); *Hornowski v. Illinois Dep't of Human Rights*, No. 00-2361 (7th Cir. Sept. 1, 2000); *Baker v. Department of Human Servs. Shapiro Dev't Ctr.*, No. 00-3203 (7th Cir. Sept. 22, 2000).

Without commenting on the merits of the Petitioner's petition or the question itself, the Respondent therefore agrees that the Petitioner is entitled to have this case decided under *Garrett* and so agrees that the Court should hold the petition in light of *Garrett*. If the Court concludes in *Garrett* that the states are immune from suit under the ADA, the Court should deny the petition. If the Court concludes the states are not immune, the Court should grant the petition, vacate the decision of the Court of Appeals, and remand the case for further proceedings.

CONCLUSION

The Court should hold the petition for writ of certiorari pending a decision in *University of Alabama at Birmingham Bd. of Trustees v. Garrett,* No. 99-1240, and decide the case in accordance with *Garrett*.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois
Counsel of Record

A. BENJAMIN GOLDGAR
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3698

Counsel for Respondent